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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re ALEXANDER G., a Person Coming
Under the Juvenile Court Law.

B218634
(Los Angeles County
Super. Ct. No. NJ24683)

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEXANDER G.,

Minor and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Gibson W. Lee, Judge. Affirmed as modified.

California Appellate Project, Jonathan B. Steiner, Executive Director, Anne Fragasso, under appointment by the Court of Appeal, for Minor and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Linda C. Johnson, Supervising Deputy Attorney General, Elaine F. Tumonis, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

The District Attorney of Los Angeles County filed a petition alleging that minor and appellant Alexander G. came within the provisions of Welfare and Institutions Code section 602 because he committed the offenses of second degree robbery (Pen. Code, § 211) and assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)). The petition further alleged that minor personally used a deadly and dangerous weapon, a knife, in the commission of the robbery. (Pen. Code, § 12022, subd. (b)(1).) The juvenile court found the allegations to be true, declared minor to be a ward of the juvenile court, and placed minor on probation in his mother's home. The minute order for the disposition hearing indicates that the juvenile court set a seven-year maximum period of physical confinement.

On appeal, minor contends that the juvenile court erred in imposing the seven-year maximum period of physical confinement and in failing to stay the punishment for his assault offense pursuant to Penal Code section 654 (section 654). We order the seven-year maximum period of physical confinement stricken from the disposition order.

BACKGROUND

On May 22, Jose V. was walking down the street when minor and Alexander V. approached him. Jose knew minor – they were fellow band members. Jose was carrying his school bag which contained some candy and a Beate's "DS" game. Minor placed a knife to Jose's throat and told him not to move. Despite minor's directive, Jose moved backwards until his back was against a fence. Then, minor's companion cut Jose's gym bag with scissors and punched Jose in the face. When someone approached, minor and his companion ran away, taking Jose's gym bag with them.

DISCUSSION

I. The Maximum Period Of Physical Confinement

Minor contends that the juvenile court erred in setting a seven-year maximum period of physical confinement because he was not removed from his mother's custody.

Respondent agrees, as do we, that the juvenile court was not authorized to set a maximum period of physical confinement. (*In re Ali A.* (2006) 139 Cal.App.4th 569, 573-574.) We also agree with respondent that, in the normal course of events, such an error does not require us to take any action because such an unauthorized order is without legal effect and, thus, a minor subject to such an order does not suffer any prejudice. (*Id.* at p. 574.) In this case, however, we order the maximum period of physical confinement stricken from the disposition order for a different reason – the juvenile court did not specify a maximum period of physical confinement.

The minute order for the disposition hearing reflects a maximum period of physical confinement of seven years. The reporter’s transcript for the disposition hearing, however, reflects that the juvenile court did not specify a maximum period of physical confinement or address the maximum period of physical confinement issue at all. Instead, the reporter’s transcripts reflects that the court clerk asked, “[W]hat’s the maximum time for this?” and the prosecutor responded, “Well, maximum confinement is seven years.” Because the juvenile court did not specify a maximum period of physical confinement, we order the maximum period of physical confinement reflected in the disposition order stricken.

II. Section 654

Minor contends that because he committed the robbery and assault with a deadly weapon offenses as part of an indivisible course of conduct, section 654¹ bars imposition of punishment for the lesser assault offense. We reject minor’s contention, holding that the provisions of section 654 do not apply when a juvenile court has not removed the

¹ Penal Code section 654, subdivision (a) provides, in pertinent part, “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.”

minor from his parents' custody and the juvenile court has not imposed a maximum period of physical confinement.

The provisions of section 654 apply to the calculation of a minor's maximum period of physical confinement only when a juvenile court removes the minor from his parents' physical custody. (*In re Danny H.* (2002) 104 Cal.App.4th 92, 106; *In re Joseph G.* (1995) 32 Cal.App.4th 1735, 1743-1744.) Because the juvenile court did not remove minor from his parents' custody, but instead placed him on probation in his mother's custody, and the juvenile court did not impose a maximum period of physical confinement, the juvenile court properly did not address the application of section 654 to this case. (*In re Danny H.*, *supra*, 104 Cal.App.4th at p. 106; *In re Joseph G.*, *supra*, 32 Cal.App.4th at pp. 1743-1744.)

DISPOSITION

The maximum period of physical confinement is ordered stricken from the disposition order. The disposition order is otherwise affirmed.

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MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

WEISMAN, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.